

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FERNANDO N. DELA CRUZ,

Plaintiff,

v.

MEGAN BRENNAN,

Defendant.

Case No. [19-cv-01140-DMR](#)

**ORDER DENYING SECOND
REQUEST FOR APPOINTMENT OF
COUNSEL**

Re: Dkt. No. 14

Pro se Plaintiff Fernando N. dela Cruz, Jr. filed this civil rights action on February 28, 2019, and also filed an application for leave to proceed in forma pauperis (“IFP”). [Docket Nos. 1, 3.] The court subsequently granted the IFP application and ordered the issuance of summons and service of process by the U.S. Marshal. [Docket Nos. 4, 8.]

On June 27, 2019, Plaintiff filed a motion to appoint pro bono counsel. [Docket No. 11.] The court denied the motion to appoint counsel on July 15, 2019. [Docket No. 12.] In its order denying the motion, the court explained that the court may appoint counsel under 28 U.S.C. § 1915(e)(1) “only if the plaintiff establishes that he or she cannot afford an attorney” and demonstrates “exceptional circumstances.” *Id.* (citing *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citation omitted)). The court further explained that “[t]o determine whether there are exceptional circumstances, the court must evaluate both ‘the likelihood of success on the merits [and] the ability of the petitioner to articulate [his] claims pro se in light of the complexity of the legal issues involved.’” *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)). The court held that Plaintiff had failed to make the required showing of “exceptional circumstances,” finding that Plaintiff’s complaint “is coherent and does not appear to present complex legal issues.” Further, the court could not “evaluate the strength of Plaintiff’s claims” given the early stage of the litigation. *Id.* at 2. The court denied the motion without prejudice to

1 Plaintiff renewing his request at a later point in the litigation. *Id.*

2 Now before the court is Plaintiff's second motion for appointment of "a free volunteer
3 lawyer." [Docket No. 14.] Plaintiff states that this case presents exceptional circumstances
4 supporting the appointment of counsel due to the likelihood of success on the merits of his claims,
5 and repeats the allegations in his complaint. The motion is denied without prejudice. As the court
6 previously found, the court cannot evaluate the strength of Plaintiff's claims at this stage of the
7 case, as there has been no litigation of the merits of the claims. Moreover, Plaintiff's amended
8 complaint and other filings to date have been coherent and do not appear to present complex legal
9 issues. Plaintiff's motion is denied without prejudice to Plaintiff renewing his request following a
10 ruling on Defendant's motion to dismiss the amended complaint (Docket No. 26). The court
11 refers Plaintiff to the section "Representing Yourself" on the Court's website, located at
12 <http://cand.uscourts.gov/proselitigants>, as well as the Court's Legal Help Centers for
13 unrepresented parties. In San Francisco, the Legal Help Center is located on the 15th Floor, Room
14 2796, of the United States Courthouse, 450 Golden Gate Avenue, San Francisco. In Oakland, the
15 Legal Help Center is located on the 4th Floor, Room 470S, of the United States Courthouse, 1301
16 Clay Street, Oakland.

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18 **IT IS SO ORDERED.**

19 Dated: September 4, 2019



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21 DONNA M. RYU
22 United States Magistrate Judge
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